

REMARKS

The pending Office Action addresses claims 1, 3-29, 31-44, 46-54, and 86-93. Claims 25, 29, 32, 39-44, 47, and 49-54 are withdrawn. Claims 1, 3-7, 11-23, 26-28, 30, 31, 33-38, 45, 46, 48, and 86-93 stand rejected.

Rejections Pursuant to 35 U.S.C. §102

(1) U.S. Patent No. 4,773,402 of Asher et al.

Claims 1, 3, 14, 17, 18, 26, and 27 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,773,402 of Asher et al. The Examiner argues that Asher discloses a guide device substantially as claimed. Applicants respectfully disagree.

Claims 1, 3, 14, 17, and 18

Asher does not teach first and second arms that slidably movable *along* a support member, as required. As discussed in the response filed on September 1, 2006, Asher is directed to a transacral implant for supporting the spine. The implant includes a base plate (27) and first and second rods (28, 29), which the Examiner asserts are the first and second arms as claimed, that are coupled to the base plate (27) and that are positioned along and secured to adjacent vertebrae to correct a spinal deformity. The implant includes bridging elements (54) with a strut (58), which the Examiner asserts is the support member as claimed, that extend between the rods. While the bridging element and strut can slide along the rods (28, 29), the rods do not slide *along* the bridging element and strut as required by independent claim 1. Thus, Asher does not teach arms that can slide along a support member as the rods do not slide along the bridging element and strut.

Further, Asher fails to teach that the *distance between* first and second arms can be adjusted, as further required by claim 1. The bridging element (54) of Asher extends between the rods (28, 29) for maintaining the spatial relationship between the rods (28, 29). The rods (28, 29) thus remain in a fixed relationship to one another, and therefore the distance between the rods (28, 29) cannot be adjusted, as required by claim 1.

Accordingly, independent claim 1, as well as claims 3, 14, 17, and 18 which depend therefrom, therefore distinguishes over Asher.

Claims 26-27

Claim 26 requires an adjustment mechanism effective to allow slidable movement of a second member *along* an elongate support of a first member. As stated above with regard to claim 1, Asher does not teach a guide member having arms that can slide *along* a support member. The rods do not slide along the bridging element and strut, but rather the bridging element and strut move along the rods.

Claim 26, as well as claim 27 which depends therefrom, therefore distinguishes over Asher.

(2) U.S. Patent No. 4,733,657 of Kluger

Claims 26, 28, 31, and 33 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,733,657 of Kluger. The Examiner argues that Kluger discloses a guide device substantially as claimed. Applicants respectfully disagree.

In the Examiner's response to arguments on pages 4-5 of the Office Action, the Examiner states:

Regarding the comments with respect to the rejection over the Kluger patent, the Applicant argues that the holes or pathways formed by the Kluger elements form one continuous opening. In response to applicant's argument that Kluger fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., bores that are not aligned) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

Claim 26 recites that at least one of the first and second guide members includes a first pathway formed therein and *adapted to align with a first bore* formed in a spinal fixation plate, and a second pathway formed therein and *adapted to align with a second bore* formed in the spinal fixation plate. In other words, each of the first and second pathways must be adapted to align with a *different* bore formed

in the plate. Thus, the first and second pathways cannot be in alignment to form one continuous opening as do the holes in the support and resting surfaces (8, 13) of Kluger.

Accordingly, independent claim 26, as well as claims 28, 30, 31, and 33, which depends therefrom, therefore distinguishes over Kluger.

(3) *U.S. Patent No. 5,423,826 of Coates et al.*

Claims 1-7, 11-13, 15-23, 26, 28, 30, 31, 36-38, 48, and 86-93 are rejected pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,423,826 of Coates et al. The Examiner continues to argue that Coates discloses a guide device substantially as claimed. Applicants respectfully disagree.

In the Examiner's response to arguments on page 5 of the Office Action, the Examiner states that he is "interpreting the threadable engagement between the lock rod and the arms in Coates device to be a slidable engagement since the threads of one component slide against the threads of another component." As discussed in the response filed on September 1, 2006, Coates teaches a drill guide having two arms (151, 152) that are pivotally coupled to one another, as shown in FIGS. 17 and 19. A threaded locking rod (155) extends through and threadably mates to the arms (151, 152) such that rotation of the locking rod (155) pivots the arms.

Applicants disagree that the slidable movement of the arms along the support member as recited by the claims is the same as the rotational threaded movement of the locking rod relative to the arms as taught in Coates. The claim requires the arms and the support member to slide relative to one another as a whole. The Examiner is not looking at the components of Coates as a whole, but rather is looking at the threads within the locking rod and the arms. While one thread of the locking rod may slide along a thread of the arm as the rod and arm are rotated, the locking rod and the arm do not slide relative to each other – they rotate relative to each other.

The ordinary meaning of "slide" is "to go with a smooth continuous motion" (Webster's Third New International Dictionary, Merriam-Webster, Inc., 1993, p. 2142). This definition clearly requires movement along a smooth surface. As explained above, the locking rod and arm of Coates do not have

smooth surfaces, but rather have threaded surface. Thus, these components do not no slide relative to one another. Again, in order to anticipate the locking rod and arm must slide relative to one another, not some feature within the locking rod and arm.

Accordingly, independent claim 1, as well as claims 2-7, 11-13, and 15-23, which depend therefrom, therefore distinguishes over Coates.

Independent claim 26, like claim 1, requires a guide member having a second arm with a first end adapted to slidably mate with and extend in a direction transverse to an elongate support. As stated above with regard to claim 1, Coates does not teach or suggest an arm that is *slidably* mated to an elongate support. Thus, claim 26, as well as claims 28, 31, 36-38, and 48 which depend therefrom, likewise distinguishes over Coates.

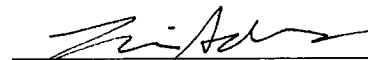
Independent claims 86 and 91, likewise, require first and second arms *slidably* movable with respect to one another. As stated above, Coates does not teach or suggest an arms that are slidably movable. Thus, claims 86 and 91, as well as claims 87-90, 92, and 93 which depend therefrom, distinguishes over Coates.

Conclusion

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

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